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SAND & SEBOLT
A LEGAL PROFESSIONAL ASSOCIATION

Fax

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26 SEP 2002

Legal Staff
International Division

To:	Box PCT	From:	Joseph A. Sebolt
Fax:	330-335-9267 703-308-6459	Pages:	14 (Including this page)
Phone:		Date:	9/26/2
Re:	Petition to Revive - 10/009,072	CC:	

Urgent	FOR REVIEW	Please Comment	Please Reply	Please Recycle
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PTO/SB/61/PCT (10-00)

Approved for use through 10/31/2002. OMB 0851-0031

U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

PETITION FOR REVIVAL OF AN INTERNATIONAL APPLICATION FOR PATENT DESIGNATING THE U.S. ABANDONED UNAVOIDABLY UNDER 37 CFR 1.137(a)	Docket Number (Optional) 1987-A-PCT-US
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First named inventor: **TOMAS NILSSON**U.S. Application No.: 10/009,072
(if known)International (PCT) Application Number: **PCT/SE00/01173**

Filed: 06/07/00

Title: **TIRE DEVICE**

Attention: PCT Legal Staff
 Box PCT
 Assistant Commissioner for Patents
 Washington, D.C. 20231

The above-identified application became abandoned as to the United States because the fees and documents required by 35 U.S.C. 371(c) were not filed prior to the expiration of the time set in 37 CFR 1.494(b) or (c) or 1.495(b) or (c) (as applicable). The date of abandonment is the day after the date on which the 35 U.S.C. 371(c) requirements were due. See 37 CFR 1.494(g) or 1.495(h).

APPLICANT HEREBY PETITIONS FOR REVIVAL OF THIS APPLICATION

NOTE: A grantable petition requires the following items:

- (1) Petition fee;
- (2) Proper reply;
- (3) Terminal disclaimer with disclaimer fee--required for all international applications having an international filing date before June 8, 1995; and
- (4) Adequate showing of the cause of unavoidable delay.

1. Petition fee

- ☐ small entity - fee _____ (37 CFR 1.17(l)). Applicant claims small entity status. See 37 CFR 1.27.
- ☒ other than small entity - fee \$110.00 (37 CFR 1.17(l))

2. Proper Reply

A. The proper reply (the missing 35 U.S.C. 371(c) requirements) in the form of Basic National Fee (Identify the type of reply):

- ☐ was previously filed on
- ☒ is enclosed herewith. - *Authorization to withdraw from Deposit Act.*

(Page 1 of 3)

Burden Hour Statement: This form is estimated to take 1.0 hour to complete. Time will vary depending upon the needs of the individual case. Any comments on the amount of time you are required to complete this form should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, Washington, DC 20231. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Assistant Commissioner for Patents, Box PCT, Washington, DC 20231.

PTO/SB/61/PCT (10-00)

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**PETITION FOR REVIVAL OF AN INTERNATIONAL APPLICATION FOR PATENT
DESIGNATING THE U.S. ABANDONED UNAVIDABLY UNDER 37 CFR 1.137(a)****Docket Number (Optional)**
1987-A-PCT-US

NOTE: The following showing of the cause of unavoidable delay must be signed by all applicants or by any other party who is presenting statements concerning the cause of delay.

09/26/02
Date


Signature

Joseph A. Sebolt, Reg. No. 35,352

Typed or printed name

(In the space provided below, please explain in detail why the 35 U.S.C. 371(c) elements (or continuing US application) were not timely filed.)

See attached letter

PTO/SB/61/PCT (10-00)

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U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

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PETITION FOR REVIVAL OF AN INTERNATIONAL APPLICATION FOR PATENT DESIGNATING THE U.S. ABANDONED UNAVOIDABLY UNDER 37 CFR 1.137(a)**3. Terminal disclaimer with disclaimer fee**

- ☒ Since this international application has an international filing date on or after June 8, 1995, no terminal disclaimer is required.
- ☐ A terminal disclaimer (and disclaimer fee (37CFR 1.20(d)) of _____ for a small entity or _____ for other than a small entity) disclaiming the required period of time is enclosed herewith (see PTO/SB/63).

4. An adequate showing of the cause of the delay, and that the entire delay in filing the 35 U.S.C. 371(c) requirements (or a continuing US application) from their due date until the filing of a grantable petition 37 CFR 1.137(a) was unavoidable, is enclosed.

WARNING: Information on this form may become public. Credit card information should not be included on this form. Provide credit card information and authorization on PTO-2038.

09/26/02
Date


Signature

Telephone
Number: (330) 244-1174

Joseph A. Sebolt, Reg. No. 35,352

Typed or printed name

4940 Munson Street, Canton, OH 44718

Address

- Enclosures: ☒ Additional sheets containing statements establishing unavoidable delay
- ☒ Fee Payment
- ☐ Reply
- ☐ Terminal Disclaimer Form
- ☐ _____

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

IN RE APPLICATION OF:	TOMAS NILSSON
FOR:	TIRE DEVICE
SERIAL NO.	10/009,072
FILING DATE:	12/06/01
ATTORNEY DOCKET NO.	1987-A-PCT-US

PETITION TO REVIVE
OFFICE ERROR OR, IN THE ALTERNATIVE, UNAVOIDABLE ABANDONMENT

BY FACSIMILE
703-305-3257

**Assistant Commissioner for Patents
Washington, DC 20231
BOX PCT**

Sir:

In response to the Notification of Abandonment dated April 3, 2002,
Applicant hereby Petitions to Revive the above-identified application.

This application was abandoned for failure to provide the full U.S. Basic National Fee by 30 months under 37 C.F.R 1.495(b). The Applicant contends that the failure to pay the full fee by the deadline of December 10, 2001, is based on an error by the Patent Office, or by the Patent Office failing to act in a timely fashion, or in the alternative, unavoidable abandonment of the application by the Applicant.

The facts in this case are as follows:

The priority application for this case was filed on June 10, 1999, in Sweden as application number 9902170-1. On June 7, 2000, a PCT application was filed, claiming priority off this case. The PCT application number is PCT/SE00/01173. The deadline for entering the national phase in the United States was December 10, 2001.

On December 6, 2001, Applicant's U.S. attorney filed the U.S. national phase application under 35 C.F.R. 371, four days prior to the deadline for paying the full U.S. Basic National fee under 37 C.F.R. 1.495(b) (2). The application was unofficially accorded serial number 10/009,072 and a filing date of 12/06/01.

The Applicant's attorney inadvertently presumed that the International Search Report was prepared by the EPO. The Applicant therefore submitted a Basic National Fee of \$890 together with a fee of \$40 for recording an assignment. The fees, totaling \$930, were submitted to the US Patent Office by way of check number 7991. In addition to submitting a check in the amount of \$930, the Applicant's attorney also authorized the Office to withdraw any additional fees required from their deposit account number 19-0083. A copy of the fee sheet authorizing the same is enclosed for review. The authorization was signed by one of Applicant's attorneys, Daniel J. Long, Reg. No. 29,404. The authorization/fee sheet was dated December 5, 2001 - five days before the full basic national fee was required. Daniel Long left the firm of Sand & Sebolt, Applicant's attorneys, in mid-January 2002. A few weeks after he left, Applicant's attorneys revoked Dan Long's authorization to withdraw monies from their deposit account.

On March 18, 2002, Applicant submitted an Information Disclosure Statement on this matter.

On April 8, 2002, Applicant received a Notification of Abandonment mailed by the PTO on April 3, 2002. The Notification stated that the application had been abandoned for failure to pay the full fees by the deadline of December 10, 2001. Applicant's attorneys believed they had submitted the correct fees and consequently on April 9, 2002, they contacted the Patent Office to determine exactly why the application had been abandoned. The clerks with whom Applicant's attorneys managed to discuss this matter could not determine why the check submitted with the application had not been applied, or alternatively, why monies had not been withdrawn from the referenced deposit account. They could also not determine why the fees were stated to be insufficient. Applicant's attorneys therefore faxed a Response to the Notification of Abandonment to the Office in an attempt to get the facts on record at the Office. A copy of this response is attached hereto. The clerks at the Patent Office stated that the file needed to be pulled from storage and that they would bring this matter to a supervisor's attention. Applicant's attorneys called the Patent Office again on April 17, 2001 and were advised to contact Charita Burt, the person whose name appeared on the Notification of Abandonment. Mrs. Burt was called on April 17th and again on April 18th and voice mail messages detailing the problem were left for her. Mrs. Burt did not call us back. In early May, Applicant's attorneys called the Patent Office again to try and determine why the Patent Office was contending that insufficient fees had been submitted. Applicant's attorney was advised by a PTO representative that the fee had been applied to the application five times and had been removed four times. The representative therefore concluded that the fees in the matter had in fact been paid and that the application would be reinstated. We requested confirmation of this fact. The

representative advised us once again that we had to talk to Charita Burt directly and said they would leave her a message to contact us. On May 29th she called, but the attorney handling this matter was not available. Mrs. Burt was called again on May 30th and again on June 2nd. Both times voice mail messages were left for her detailing the problem at hand. Finally, on June 5th Mrs. Burt contacted us and advised us that the problem with the application was that Applicant's attorneys had paid the Basic National Fee based on a search by the EPO instead of Sweden, the country where the actual search had been conducted. There was consequently a shortfall in the fees of \$150. Mrs. Burt advised that the reason the application had been abandoned was because when the PTO came to withdraw the additionally required amount from the Applicant's attorney's deposit account, it was discovered that Daniel J. Long no longer had authorization to withdraw money from the account. Mrs. Burt advised that the attempted withdrawal from the deposit account was made in February 2002. This attempted withdrawal from the account was made two months after the deadline of December 10, 2002. Applicant's attorneys queried why the Office had not notified them of the shortfall and Mrs. Burt responded that the deadline for paying the fee had already passed and so there was no recourse at this point.

Applicant respectfully submits that the Patent Office has erred in abandoning the application by not attempting to withdraw the shortfall in funds prior to the deadline of December 10, 2001. On the date that the Patent Office received the application for filing under 35 U.S.C. 371, namely December 6, 2001, there were still four days within which to provide the additional funds. Attorney Daniel J. Long, Reg. No. 29,404, was authorized to withdraw funds from Applicant's attorney's Deposit Account 19-0083 on

the date the authorization was signed and on up until the approximately the end of January 2002. If the Office had attempted to withdraw funds in the period between December 6, 2001 to December 10, 2001, no problems would have been encountered with withdrawing those monies from the deposit account in question. **Applicant further contends that the date of the authorization should have been taken into account when the Office came to withdraw funds from the deposit account.** If this had been done, the full basic fee would have been submitted to the Office in a timely fashion. The fact that the Office **took two months, until February 2002,** to access this deposit account to withdraw the funds should not be held against the Applicant and should not cost the Applicant the opportunity to obtain patent protection for his invention in the United States.

Applicant respectfully submits that the Office erred in not attempting to withdraw the shortfall in funds prior to the deadline of December 10, 2002, even though the Office was aware of the fact that failure to provide the full Basic National Fee would result in automatic abandonment of this application. Applicant further respectfully submits that the Office erred in not taking the date of the authorization to withdraw funds into consideration when they attempted to access the deposit account. Applicant further respectfully submits that the Office could have verified the authorization with the Applicant's attorneys with a quick phone call.

Applicant therefore respectfully petitions that this application be revived on the grounds of Office error.

In the alternative, Applicant respectfully submits that this application was unavoidably abandoned by the Applicant. Applicant fully intended to pay the full Basic

National Fee, but through an inadvertent error, paid a lesser amount than was required. Additionally, through unfortunate circumstances, the attorney who authorized the withdrawal of any additional funds from Deposit Account 19-0083, had left our firm by the time that the Patent Office attempted to withdraw the shortfall in fees. The Applicant therefore, in the alternative, respectfully requests revival of the application on the grounds of unavoidable abandonment by the Applicant under 37 C.F.R. 1.137(a).

Applicant hereby authorizes the Office to withdraw the shortfall in the required Basic National Fees, namely \$150.00 from Deposit Account No. 19-0083. The Office is further authorized to withdraw any additional fees required from Deposit Account No. 19-0083. A fee sheet is provided herewith authorizing the withdrawal of said fees.

Inasmuch as the Applicant contends that this abandonment occurred through an error of the Patent Office, Applicant respectfully submits that no Petition fee is required in this instance. **Should it be decided, however, that no Office error occurred and that the application was unavoidably abandoned, the Office is hereby authorized to withdraw any funds to cover such Petition fee (i.e. \$110.00) and any other required fees from Deposit Account No. 19-0083.**

Applicant submits that since this international application has an international filing date on or after June 8, 1995, no terminal disclaimer is required.

If the Office needs to discuss this matter further with the Applicant or if a telephone interview would be beneficial to facilitate the revival of the instant application, the Office is urged to contact the undersigned at the telephone number listed below.

Respectfully submitted at Canton, Ohio, this 28th day of September, 2002.

SAND & SEBOLT



By: Joseph A. Sebolt
Registration No. 35,352

Aegis Tower, Suite 1100
4940 Munson Street, NW
Canton, Ohio 44718-3615
Telephone: (330) 244-1174
Fax (330) 244-1173

JAS/ff

Attorney Docket: 1987-A-PCT-US

Enclosure: Check for \$150.00

Copy of Fee Sheet authorizing withdrawal from Deposit Account
Copy of Response to Notification of Abandonment

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of: **TOMAS NILSSON**

Serial No: **10/009,072**

Filing Date: **12/06/01**

Mark: **TIRE DEVICE**

Attorney Docket: **1987-A-PCT-US**

I hereby certify this Petition to Revive with respect to the above patent application is being facsimile transmitted to the United States Patent and Trademark Office (Fax No.

³¹⁻⁶⁴⁵⁹
~~703-306-3257~~ on Sep 26, 2002.

[Handwritten mark]



Fiona Ferguson

PTO/SB/17 (11-01)

Approved for use through 10/31/2002. OMB 0651-0032
Patent and Trademark Office: U.S. DEPARTMENT OF COMMERCE

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**FEE TRANSMITTAL
for FY 2002**

Patent fees are subject to annual revision.

☐ Applicant claims small entity status. See 37 CFR 1.27**TOTAL AMOUNT OF PAYMENT****\$260.00****Complete if Known**

Application Number	10/009,072
Filing Date	12/06/01
First Named Inventor	TOMAS NILSSON
Examiner Name	
Group Art Unit	
Attorney Docket No.	1987-A-PCT-US

METHOD OF PAYMENT (check all that apply)☐ Check ☐ Credit card ☐ Money Order ☐ Other ☐ None☒ Deposit Account:Deposit
Account
Number

19-0083

Deposit
Account
Name

SAND & SEBOLT

The Commissioner is authorized to: (check all that apply)

☒ Charge fee(s) indicated below ☒ Credit any overpayments☒ Charge any additional fee(s) during the pendency of this application☐ Charge fee(s) indicated below, except for the filing fee to the above identified deposit account.**FEE CALCULATION****1. BASIC FILING FEE**

Large Entity / Small Entity

Fee Code	Fee (\$)	Fee Code	Fee (\$)	Fee Description	Fee Paid
101	740	201	370	Utility filing fee	
106	330	206	165	Design filing fee	
107	510	207	255	Plant filing fee	
108	740	208	370	Reissue filing fee	
114	160	214	80	Provisional filing fee	

SUBTOTAL (1)

2. EXTRA CLAIM FEES FOR UTILITY AND REISSUE

Total Claims	Extra Claims	Fee from below	Fee Paid
Independent Claims	-20** = 0	X	0.00
Multiple Dependent	-3** = 0	X	0.00

Large Entity / Small Entity

Fee Code	Fee (\$)	Fee Code	Fee (\$)	Fee Description	Fee Paid
103	18	203	9	Claims in excess of 20	
102	84	202	42	Independent claims in excess of 3	
104	280	204	140	Multiple dependent claim, if not paid	
109	84	209	42	** Reissue independent claims over original patent	
110	18	210	9	** Reissue claims in excess of 20 and over original patent	

SUBTOTAL (2)

\$0.00

**or number previously paid, if greater; For Reissues, see above

FEE CALCULATION (continued)**3. ADDITIONAL FEES**

Large Entity / Small Entity

Fee Code	Fee (\$)	Fee Code	Fee (\$)	Fee Description	Fee Paid
105	130	205	65	Surcharge - late filing fee or oath	
127	50	227	25	Surcharge - late provisional filing fee or cover sheet	
139	130	139	130	Non - English specification	
147	2,520	147	2,520	For filing a request for ex parte reexamination	
112	920*	112	920*	Requesting publication of SIR prior to Examiner action	
113	1,840*	113	1,840*	Requesting publication of SIR after Examiner action	
115	110	215	55	Extension for reply within first month	
116	400	216	200	Extension for reply within second month	
117	820	217	400	Extension for reply within third month	
118	1,440	218	720	Extension for reply within fourth month	
128	1,980	228	980	Extension for reply within fifth month	
119	320	219	160	Notice of Appeal	
120	320	220	160	Filing a brief in support of an appeal	
121	280	221	140	Request for oral hearing	
138	1,510	138	1,510	Petition to Institute a public use proceeding	
140	110	240	55	Petition to revive - unavoidable	110.00
141	1,280	241	640	Petition to revive - unintentional	
142	1,280	242	640	Utility issue fee (or reissue)	
143	480	243	230	Design issue fee	
144	820	244	310	Plant issue fee	
122	130	122	130	Petitions to the Commissioner	
123	50	123	50	Processing fee under 37 CFR § 1.17(q)	
126	180	126	180	Submission of Information Disclosure Statement	
581	40	581	40	Recording each patent assignment per property (times number of properties)	
146	740	246	370	Filing a submission after final rejection (37 CFR § 1.129(a))	
149	740	249	370	For each additional invention to be examined (37 CFR § 1.129(b))	
179	740	279	370	Request for Continued Examination (RCE)	
189	900	189	900	Request for expedited examination of a design application	

Other fee (specify) Shortfall in Basic National Fee

150.00

*Reduced by Basic Filing Fee Paid

SUBTOTAL (3)

\$260.00

SUBMITTED BY

Name (Print/Type)

Joseph A. Sebolt

Registration No.
(Attorney/Agent)

35,352

Complete (if applicable)

Telephone

(330) 244-1174

Signature

Date

09/26/02

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PTO/SB/17 (11-01)

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for FY 2002**

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Complete if Known

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Examiner Name	
Group Art Unit	
Attorney Docket No.	1987-A-PCT-US

METHOD OF PAYMENT (check all that apply)☐ Check ☐ Credit card ☐ Money Order ☐ Other ☐ None☒ Deposit Account:Deposit
Account
Number

19-0083

Deposit
Account
Name

SAND & SEBOLT

The Commissioner is authorized to: (check all that apply)

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Multiple Dependent			

Large Entity		Small Entity		Fee Description	Fee Paid
Fee Code	Fee (\$)	Fee Code	Fee (\$)		
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SUBTOTAL (2)

\$0.00

**or number previously paid, if greater; For Reissues, see above

FEE CALCULATION (continued)**3. ADDITIONAL FEES**

Large Entity		Small Entity		Fee Description	Fee Paid
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Joseph A. Sebolt

Registration No.
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35,352

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*** RX REPORT ***

RECEPTION OK

TX/RX NO	9455
CONNECTION TEL	330 244 1173
CONNECTION ID	
START TIME	09/26(TH)10:24
USAGE TIME	05'41"
PGS.	14
RESULT	OK